

with respect to elected species 1, then at least claims 2-5, 9-11 should also be allowed with respect to the non-elected species, since claim 1 is generic, and claims 2-5 and 9-11 are dependent from claim 1 and incorporate all limitations found therein.

In addition, the requirement for election of species is respectfully traversed, and reconsideration is respectfully requested. It is felt that a search of the classes appropriate to the elected species and claims 1-5, 9-16, 20-27, and 31-34 would necessarily include the Patent Office searching the particular classes in which the non-elected species of Groups 2-4, corresponding to claims 6-8, 17-19, and 28-30, respectively would be searched, as each claim group encompasses practicing a method generally corresponding to generic claim 1, whether in computer readable form (claims 12-22) or implemented in a system (claims 23-34).

Furthermore, the classification of Groups 1-4 in different invention classes is not necessarily sufficient grounds to require restriction. Applicant respectfully contends that the claimed computer readable medium of claims 12-22 and system of claims 23-34 are so intimately tied to the method of claims 1-11, that a search of Group 1 with respect to the method claims would necessarily find the most relevant art with respect to the claims to a computer readable medium and system including the method. Applicant respectfully submits that the burden placed on the Examiner of searching different invention classes in a single patent application will be minimal compared to the burden placed on the Examiner in examining and prosecuting an additional divisional patent application resulting from the restriction requirement.

Additionally, each species is related, as each species requires use of an algorithm for estimating the time delay associated with surface acoustic wave propagation through a sensor as a function of frequency. Thus, Applicant respectfully contends that there is unity of invention under PCT Rule 13.1. Applicant further respectfully contends that, were restriction to be effected between the claims in Groups 1-4, a separate examination of the claims in each of four groups would require substantial duplication of work on the part of the U.S. Patent and Trademark Office. Even though some additional consideration would be necessary, the scope of analysis of novelty of all the claims of Groups 1-4 would have to be as rigorous as when only the claims of Group 1 were being considered by themselves. Clearly, this duplication of effort would not be warranted where these claims are so interrelated.

Finally, Applicant respectfully submits that species restriction between the claims in Groups 1-4 would place an undue burden on Applicant by requiring payment of a separate filing fee for examination of the nonelected claims, as well as the added costs associated with prosecuting four applications and maintaining four patents.

The requirement for election of species is traversed, and reconsideration is respectfully requested. Additionally, it is respectfully urged that all claims now pending before the Examiner are in condition for allowance. A notification of allowability is respectfully solicited. Should the Examiner determine that a telephone interview would be beneficial in resolving any of the issues in this pending application, the Examiner is invited to telephone the undersigned attorney at the telephone number noted below.

Respectfully submitted,

December 19, 2008
Date

By: /James A. Baker/
James A. Baker, Reg. No.: 44,520
Telephone No.: 651-736-9667

Office of Intellectual Property Counsel
3M Innovative Properties Company
Facsimile No.: 651-736-3833

JAB/spg